

Consumer Finance Litigation



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New York Further Extends the COVID-19 Emergency Eviction and Foreclosure Prevention and Small Businesses Acts to January 15, 2022, but Provides a Way to Challenge Hardship Declarations

Lenders, mortgage servicers, and other financial institutions should take note that the New York State legislature has extended the COVID-19 Emergency Eviction and Foreclosure Prevention Act (“CEEFPFA”) and the COVID-19 Emergency Protect Our Small Businesses Act to January 15, 2022. Therefore, the requirements and stays with respect to residential and commercial foreclosures and evictions and credit reporting remain effective through January 22, 2021, to the extent a tenant or mortgagor has submitted a Hardship Declaration. The legislature also amended the statutes, in part, to address the United States Supreme Court’s August decision blocking the enforcement of Part A of the CEEFPFA for violating landlords’ due process rights. Per the amendments, landlords and mortgagees can now challenge a self-certified Hardship Declaration in Court.

On September 2, 2021, through a Special Legislative Session, New York State extended the COVID-19 Emergency Eviction and Foreclosure Prevention Act (“CEEFPFA”) and the COVID-19 Emergency Protect Our Small Businesses Act (“SBA”) through January 15, 2022.¹ As discussed in our [August 17, 2021 Alert](#), in *Chrysafis v. Marks, No. 21A8, -- S. Ct. --, 2021 WL 3560766* (Aug. 12, 2021), the United States Supreme Court (“SCOTUS”) granted an injunction blocking the enforcement of CEEFPFA and held that Part A of the CEEFPFA, a provision allowing tenants to submit an affidavit self-certifying their pandemic-related hardship to prevent eviction, violated the plaintiffs-landlords’ due process rights (“Hardship Declaration”) and was

unconstitutional. New York’s new legislation attempts to address this constitutional issue by providing a mechanism for landlords and mortgagees in residential and commercial evictions and foreclosures to challenge the Hardship Declarations by filing a motion.² When such a challenge is made, the legislation requires the Court to “grant a hearing to determine whether to find the respondent’s [or defendant’s] hardship claim invalid.” The challenge must be based on a good faith belief that the tenant/mortgagor has not experienced a hardship, and the challenger must overcome the rebuttable presumption of financial hardship that is created by the tenant/mortgagor’s submission of the Hardship Declaration.

Although this new legislation attempted to address the due process issues identified by *Chrysafis*, the landlords/mortgagors still have the burden of proving that the tenant/mortgagor does **not** have a pandemic-related hardship and the tenant/mortgagor is not required to provide documentation to support the claimed hardship. Accordingly, landlords or mortgagors may still have grounds for attacking the constitutionality of this legislation or challenging the sufficiency of the court procedures enacted in the new legislation.

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1. On December 28, 2020, in response to the COVID-19 pandemic, the New York legislature passed the CEEFPA (S.9114/A.11181), which became effective immediately. The CEEFPA was aimed at providing relief to tenants facing residential eviction (Part A) and mortgagors/borrowers facing pending or future residential foreclosure proceedings (Part B, Subpart A). In addition, the CEEFPA (i) prohibited local governments from proceeding with tax lien sales or commencing tax foreclosures until May 1, 2021 on residential properties (Part B, Subpart B); (ii) prohibited credit discrimination and negative credit reporting (Part B, Subpart C); and (iii) required local governments to carry-over the Senior Citizens' Homeowners Exemption and the Disabled Homeowner Exemption to 2021 (Part B, Subpart D). On January 6, 2021, the New York legislature passed the SBA (S.471A/A.3207), which became effective immediately. The SBA aimed at providing commercial eviction protections for small businesses of under 50 employees that demonstrate financial hardship and commercial foreclosure protections to small businesses that have 10 or less units. The new legislation amending these statutes can be located at [Bill Search and Legislative Information](#).
 2. See Bill No. S50001, Part B, Subpart A §§ 9-10, Subpart B §§ 8-9, Subpart C §§ 6-7; Part C, Subpart A §§ 9-10, Subpart B §§ 8-9, Subpart C §§ 6-7.